

Subpart A—Servicing and Liquidation of Chattel Security

§ 1962.1 Purpose.

This subpart delegates authorities and gives procedures for servicing, care, and liquidation of Farmers Home Administration or its successor agency under Public Law 103–354 (FmHA or its successor agency under Public Law 103–354) chattel security, Economic Opportunity (EO) loan property, and note only loans. Security servicing for Non-program (NP) loans on farm property will be according to subpart J of part 1951 of this chapter.

[50 FR 45783, Nov. 1, 1985, as amended at 58 FR 52654, Oct. 12, 1993]

§ 1962.2 Policy.

Chattel security, EO property and note only loans will be serviced to accomplish the loan objectives and protect FmHA or its successor agency under Public Law 103–354's financial interest. To accomplish these objectives, security will be serviced in accordance with the security instruments and related agreements, including any authorized modifications, provided the borrower has reasonable prospects of accomplishing the loan objectives, properly maintains and accounts for the security, and otherwise satisfactorily meets the loan obligations including repayment.

§ 1962.3 Authorities and responsibilities.

(a) *Redelegation of authority.* Authority will be redelegated to the maximum extent possible consistent with program requirements and available resources. The State Director, District Director and County Supervisor are authorized to redelegate, in writing, any authority delegated to them in this subpart to any employee determined by them to be qualified.

(b) *Responsibilities*—(1) *FmHA or its successor agency under Public Law 103–354 personnel.* The State Director, District Director and County Supervisor are responsible for carrying out the policies and procedures in this subpart.

(2) *Borrower.* The borrower is responsible for repaying the loans, maintaining, protecting, and accounting to

FmHA or its successor agency under Public Law 103–354 for all chattel security, and complying with all other requirements specified in promissory notes, security instruments, and related documents.

(c) *Exception authority.* The Administrator may, in individual cases, make an exception to any requirement or provision of this subpart which is not inconsistent with the authorizing statute or other applicable law if the Administrator determines that application of the requirement or provision would adversely affect the Government's interest. The Administrator will exercise this authority only at the request of the State Director and on the recommendation of the appropriate program Assistant Administrator. Requests for exceptions must be made in writing by the State Director and supported with documentation to explain the adverse effect on the Government's interest, propose alternative courses of action, and show how the adverse effect will be eliminated or minimized if the exception is granted.

(d) *Farms in more than one jurisdiction.* If the farm is situated in more than one State, County, or Parish, the loan will be serviced by the County Office serving the County in which the borrower's residence is located. If the borrower is a corporation, cooperative, partnership or joint operation is the borrower's residence is not on the farm, the loan will be serviced by the County Office serving the County in which the farm or a major portion of the farm is located.

[50 FR 45783, Nov. 1, 1985, as amended at 51 FR 13480, Apr. 21, 1986]

§ 1962.4 Definitions.

As used in this subpart, the following definitions apply:

Abandonment. Voluntary relinquishment by the borrower of control of security or EO property without providing for its care.

Acquired chattel property. Former security or EO property of which FmHA or its successor agency under Public Law 103–354 has become the owner (See § 1955.20 of Subpart A of Part 1955 of this chapter).

Basic security. Consists of all equipment serving as security for FmHA or

its successor agency under Public Law 103-354 loans. It also consists of real estate and all foundation herds and flocks, including replacements, which serve as a basis for the farming operation outlined in the Farm and Home Plan or yearly budget which serve as security for FmHA or its successor agency under Public Law 103-354 loans. With respect to livestock herds and flocks, animals that are sold as a result of the normal culling process are basic security unless the borrower has replacements that will keep numbers and production up to planned levels. However, if a borrower plans to make a significant reduction in his basic livestock herd or flocks, the animals or birds that are sold in making this reduction will be considered basic security.

Borrower. When a loan is made to an individual, the individual is the borrower. When a loan is made to an entity, the cooperative, corporation, partnership or joint operation is the borrower.

Chattel security. Chattel property which may consist of, but is not limited to, inventory; accounts; contract rights; general intangibles; crops; livestock; fish; farm, business, and recreational equipment; and supplies, and which is covered by financing statements and security agreements, chattel mortgages, and other security instruments.

Civil action. Court proceedings to protect FmHA or its successor agency under Public Law 103-354's financial interests such as obtaining possession of property from borrowers or third parties, judgments on indebtedness evidenced by notes or other contracts or judgments for the value of converted property, or judicial foreclosure. Bankruptcy and similar proceedings to impound and distribute the bankrupt's assets to creditors and probate and similar proceedings to settle and distribute estates of incompetents or of decedents under a will, or otherwise, and pay claims of creditors are not included.

Criminal action. Prosecution by the United States to exact punishment in the form of fines or imprisonment for alleged violations of criminal statutes.

These include but are not limited to violations such as:

Unauthorized sale of security.

Purchase of security with intent to defraud and without payment of the purchase price to FmHA or its successor agency under Public Law 103-354;

Falsification of assets or liabilities in loan applications;

Application for a loan for an authorized purpose with intent to use and use of loan funds for an unauthorized purpose;

Decision after obtaining a loan to use and using the funds for an unauthorized purpose and then making false statements regarding their use;

By scheme, trick, or other device, covering up or concealing misuse of funds or authorized dispositions of security or EO property or other illegal action; or

Any other false statements or representations relating to FmHA or its successor agency under Public Law 103-354 matters. To establish that a criminal act was committed by selling EO property, it is necessary to show that the borrower, at the time the loan agreement or the check on the supervised bank account was signed, intended to sell the property in violation of the loan agreement. The Federal criminal statute of limitations bars institution of criminal action 5 years after the date the act was committed. Unauthorized disposition of even minor items by the borrower will be considered criminal violations.

Default. Failure of the borrower to observe the agreements with FmHA or its successor agency under Public Law 103-354 as contained in notes, security instruments, and similar or related instruments. Some examples of default or factors to consider in determining whether a borrower is in default are when a borrower:

Is delinquent, and the borrower's refusal or inability to pay on schedule, or as agreed upon, is due to lack of diligence, lack of sound farming or other operation, or other circumstances within the borrower's control.

Ceases to conduct farming or other operations for which the loan was made or to carry out approved changed operations.

Has disposed of security or EO property without FmHA or its successor agency under Public Law 103-354 approval, has not cared properly for such property, has not accounted properly for such property or the proceeds from its sale, or taken some action which resulted in bad faith or other violations in connection with the loan.

Has progressed to the point to be able to obtain credit from other sources, and has agreed in the note or other instrument to do so but refuses to comply with that agreement.

EO property. Nonsecurity chattel property purchased, refinanced, or improved with EO loan funds.

EO property essential for minimum family living needs. Nonsecurity chattel or real property required to provide food, shelter, or other necessities for the family or to produce income without which the family would not have such necessities. This includes livestock, poultry, or other animals used as food or to produce food for the family or to produce income for minimum essential family living needs; modest amounts of real property needed for family shelter or to produce food or income for minimum essential family living needs, and items such as equipment, tools, and motor vehicles, which are of minimum value and are essential for family living needs or to produce income for that purpose. Any such item of a value in excess of the minimum need may be sold and a portion of the sale proceeds used to purchase a similar item of less value to meet such need. The remainder of the proceeds will be paid on the EO loan.

Farm income. Proceeds from the sale of chattel security which is normally sold annually during the regular course of business such as crops, feeder livestock and other farm products.

Farmer Program loans. These loans and Farm Ownership (FO), Operating (OL), Soil and Water (SW), Recreation (RL), Economic Emergency (EE), Emergency (EM), Economic Opportunity (EO) and Special Livestock (SL) loans and Rural Housing loans made for farm service buildings (RHF).

FmHA or its successor agency under Public Law 103-354. The United States of America, acting through the Farmers Home Administration or its suc-

cessor agency under Public Law 103-354 and its predecessor administrative agencies.

Foreclosure sale. Act of selling security either under the "Power of Sale" in the security instrument or through court proceedings.

Liquidation. The act of selling security or EO property to close the loan when no further assistance will be given; or instituting civil suit against a borrower to recover security or EO property or against third parties to recover security or its value or to recover amounts owed to FmHA or its successor agency under Public Law 103-354; or filing claims in bankruptcy or similar proceedings or in probate or administrative proceedings to close the loan.

Normal income security. All security not considered basic security, including crops, livestock, poultry products, Agricultural Stabilization and Conservation Service payments and Commodity Credit Corporation payments, and other property covered by Farmers Home Administration or its successor agency under Public Law 103-354 liens that is sold in conjunction with the operation of a farm or other business, but shall not include any equipment (including fixtures in States that have adopted the Uniform Commercial Code), or foundation herd or flock, that is the basis of the farming or other operation, and is the basic security for a Farmers Home Administration or its successor agency under Public Law 103-354 farmer program loan.

Office of the General Counsel (OGC). The Regional Attorneys, Attorneys-in-Charge, and National Office staff of the Office of the General Counsel of the United States Department of Agriculture.

Purchase money security interest. Special type of security interest which, if properly perfected, takes priority over an earlier-perfected security interest. A security interest is a purchase money security interest to the extent that it is taken by the seller of the collateral to secure all or part of its purchase price or by a lender who makes loans or is obligated to make loans or otherwise gives value to enable the debtor to acquire the particular collateral or obtain rights in it. Such value

must be given not later than the time the debtor acquires the collateral or obtains rights in it.

Repossession property. Security or EO property in FmHA or its successor agency under Public Law 103-354's custody, but still owned by the borrower.

Security. Also means "Chattel security" when appropriate.

[50 FR 45783, Nov. 1, 1985, as amended at 51 FR 13481, Apr. 21, 1986; 53 FR 35783, Sept. 14, 1988]

§ 1962.5 [Reserved]

§ 1962.6 Liens and assignments on chattel property.

(a) *Chattel property not covered by Agency lien.* (1) When additional chattel property not presently covered by an Agency lien is available and needed to protect the Government's interest, the County Supervisor will obtain one or more of the following:

- (i) A lien on such property.
- (ii) An assignment of the proceeds from the sale of agricultural products when such products are not covered by the lien instruments.
- (iii) An assignment of other income, including FSA Farm Programs (formerly ASCS) payments.

(2) When a current loan is not being made to a borrower, a crop lien will be taken as additional security when the County Supervisor determines in individual cases that it is needed to protect the Government's interests. However, a crop lien will not be taken as additional security for Farm Ownership (FO), Rural Housing (RH), Labor Housing (LH), and Soil and Water (SW) loans. When a new security agreement or chattel mortgage is taken, all existing security items will be described on it.

(b) [Reserved]

(c) *Assignments of upland cotton, rice, wheat and feed grain payments.* Borrowers may assign FSA Farm Programs (formerly ASCS) payments under upland cotton, rice, wheat and feed grain programs.

(1) *Obtaining assignments.* Assignments will be obtained as follows:

- (i) Only when it appears necessary to collect operating-type loans.
- (ii) Only for the crop year for which operating-type loans are made, and

(iii) For only the amount anticipated for payments as indicated on Form FmHA 1962-1, "Agreement for the Use of Proceeds/Release of Chattel Security," of the applicable upland cotton, rice, wheat and feed grain programs.

(2) *Selecting counties.* The County Supervisor then will:

(i) Determine, at the time of loan processing for indebted borrowers and new applicants, who must give assignments and obtain them no later than loan closing. Special efforts will be made to obtain the bulk of assignments before the sign-up period for enrolling in the annual Feed Grain and Wheat set aside programs.

(ii) Obtain assignments from selected borrowers on Form ASCS-36, "Assignments of Payment," which will be obtained from FSA Farm Programs.

(3) *Releasing assignments and handling checks.* (i) The County Supervisor will inform FSA Farm Programs that releasing its assignment whenever a borrower pays the amount due for the year on the operating-type loan debt or pays the debt in full.

(ii) Checks obtained as a result of an assignment will be made only to the Agency, and the proceeds used as indicated on Form FmHA 1962-1.

[61 FR 35929, July 9, 1996]

§ 1962.7 Securing unpaid balances on unsecured loans.

The County Supervisor will take a lien on a borrower's chattel property in accordance with §1962.6 of this subpart if it is necessary to rely on such property for the collection of the borrower's unsecured indebtedness, or if it will assist in accomplishing loan objectives.

§ 1962.8 Liens on real estate for additional security.

The County Supervisor may take the best lien obtainable on any real estate owned by the borrower, including any real estate which already serves as security for another loan. Additional liens will be taken only when the borrower is delinquent, the existing security is not adequate to protect FmHA or its successor agency under Public Law 103-354 interests, and the borrower has substantial equity in the real estate to be mortgaged, and taking such